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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 98-22

In re)
)
Amendment of Section 73.202 (b)) RM-9183
Table of Allotments)
FM Broadcast Stations)
(DeRuyter and Chittenango, NY))

To: The Chief, Allocations Branch

REPLY COMMENTS OF PETITIONER

CRAM COMMUNICATIONS, LLC ("petitioner"), by its counsel, respectfully submits its reply comments in response to the COMMENTS OF COX RADIO, INC. in the above-captioned proceeding. In support whereof, the following is stated:

1. Cox Radio, Inc. ("Cox") submitted the only comments other than those of petitioner in response to the Commission's Notice of Proposed Rulemaking in this proceeding. Cox notes (at f.n. 1 of its Comments) that it is the licensee of five radio station in the Syracuse radio market. Cox became the licensee of 5 stations in the Syracuse market when it merged with NewCity Communications, Inc. That merger led to an investigation by the Department of Justice. A representative of the Department of Justice contacted petitioner's president, Mr. Fox, regarding the competitive implications of Cox owning 5 stations in a single market. At that time Mr. Fox advised the Justice Department that he did not see any problem with the merger and supported Cox's acquisition of the 5 stations. This was based on the belief that the marketplace is the best

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arbiter of competitive issues. Cox's 5 stations make it the largest single group owner in the Syracuse market, controlling approximately 1/3 of the total market.¹

2. Now Cox opposes the change of city of license of WVOA based on its belief that the proposed change of city of license would somehow transform WVOA into a "Syracuse" station. Cox seems to fear that WVOA will be miraculously converted to a "Syracuse" station by virtue of the proposed change of community of license to Chittenango, perhaps like Dorothy in the Wizard of Oz² clicking her feet and wishing herself back in Kansas. This is clearly a flight of fantasy on the part of Cox which is not supported by the facts. What is more troubling is the fact that Cox, with 5 stations in Syracuse, and the subject of a Justice Department investigation, would now challenge even the possibility that its competitive advantage would be eroded in the slightest way. This suggests that Cox's intent is to manipulate and control the Syracuse market, and that its true intent is indeed anti-competitive. Had Mr. Fox known that Cox would act in such an anti-competitive manner, he would never have supported Cox's position when talking to the Justice Department. Indeed, this new information may be of the type which should be brought to the Justice Department's attention for further consideration.

3. In undertaking its flight of fantasy, Cox commences its argument by referring to Chittenango as "a suburban community less than five miles outside the Syracuse Urbanized Area." This phrase appears intended to link Chittenango in proximity to Syracuse. As the Commission knows, the Urbanized Area extends well beyond the city limits of the community and marks the boundary wherein urban population is

¹ Cox's share of the market based on the Fall 1997 Arbitron ratings was 32.1%. It generally enjoys between a 30% and 35% share of the market.

² Chittenango is the birthplace of L. Frank Baum, the author of the Wizard of Oz.

concentrated. The emphasis should be on the fact that Chittenango is “outside” the Syracuse Urbanized Area -- indeed, almost 5 miles outside the Urbanized Area. It is clearly not a part of the Syracuse Urbanized Area, which is the demarcation used by the Commission to determine whether a community should be viewed for allocation purposes as part of a central city. In light of Chittenango’s considerable distance outside an Urbanized Area, there is no basis for considering it part of the Syracuse market.

4. As recognized by Cox, the Commission will remove a community’s sole local transmission source only in “rare circumstances.” As shown in petitioner’s Comments, this case presents such “rare circumstances.” The purpose here is to rectify an historical anomaly. The fact is that WVOA was not founded as a local outlet to DeRuyter but as a part of a unique “farming network” which served its purpose in its time but which has now become outmoded. DeRuyter was designated as the community of license only as a matter of convenience and never has been the focal point for the station’s programming. This is, in fact, not a case where DeRuyter is losing anything which it ever had. Chittenango is gaining something which it richly deserves, based not merely on its size³ but on its significant cultural and historical roots.⁴

5. While Cox argues that “WVOA has served DeRuyter for almost fifty years,”⁵ this has been demonstrated to be nothing more than fiction. DeRuyter was picked as the community of license only because it was the closest community to the location of the transmitter site and not because the station was established to serve DeRuyter. The

³ Although size alone should be an adequate justification here where Chittenango is nearly 10 times larger than DeRuyter.

⁴ See Comments of Petitioner in this proceeding.

⁵ Elsewhere in the same paragraph, Cox makes the contradictory statement that “WVOA has been licensed to DeRuyter for over fifty years.” “Almost fifty years” is the accurate time period.

original studio was in the Ithaca area. The studio was never in DeRuyter. Cox cites a ruling from the Commission denying a proposal to “relocate WVOA’s main studio outside the community of license.” This ruling was in 1986. Up until then (nearly 40 years), the studio had been outside the community of license. Before the Commission’s ruling was ever put into effect by WVOA, the rules were changed to permit stations to locate their main studio outside the city of license (within the City Grade contour). As a result, WVOA never had a studio in DeRuyter, notwithstanding the cited ruling.

6. Cox states that “Cram clearly understood WVOA’s relationship with DeRuyter when it purchased the station in 1996....” As with most of Cox’s argument, this statement is made in error. Cram did not purchase the station until 1997. Further, Cram’s clear understanding of the station was that it had never had a studio in DeRuyter and had never served as a local outlet of DeRuyter. While Cram has done its best to serve the “myth,” it would far prefer to serve the reality. The reality is that Chittenango is a community which deserves its own local outlet; DeRuyter is not.

7. Cox’s argument is not only weak on the facts; it is weak on the law. It states, at p. 4, that “under Cram’s rationale for granting the reallocation, every larger community would be more deserving of a first local service than a smaller community.” As clearly set forth in petitioner’s Comments, such a broad argument is not being advanced in this proceeding. What is being requested is a very narrow ruling which would apply only to the facts of this unique case. Petitioner is requesting that the Commission recognize the historical anomaly of this particular market and its unique history of being part of a “farming network” which has become defunct. The Commission now has the opportunity to correct this anomaly and license WVOA as a local service to a deserving community -

the community of Chittenango. This ruling would have no application to virtually any other situation in the country because of the unique circumstances present here.

8. Although this case may be restricted to the very narrow confines of this unique situation discussed above, it is respectfully submitted that this case could also be decided based on size alone. In this case, the proposed community is not merely larger than the community being replaced – it is nearly 10 times larger. At the same time, neither community is in an Urbanized Area. A ruling based on the significant disparity in size between the communities would hardly serve as precedent that “every larger community would be more deserving of a first local service than a smaller community.” A decision that such a change would be in the public interest where the proposed community is more than five times as large as the community being replaced and neither community is in an Urbanized Area would be well-justified and of relatively small precedential impact. It is postulated here that there are few such situations in existence where a station could be moved from such a small community as DeRuyter to a community of such substantially greater significance as in the case of Chittenango, where both communities are outside an Urbanized Area. This case is rare because DeRuyter was never picked as the community of license based on its need for local service, and DeRuyter never received such local service.

9. As a final matter, the historical and cultural roots of Chittenango have been treated in petitioner’s Comments. Contrary to Cox’s assertions, Chittenango is a very significant community in its own right, and it is not merely a suburb of Syracuse. Cox’s arguments include statements which do not accurately reflect all of the facts of the situation. For example, Cox states, at p. 5, that “Chittenango does not have its own

franchised cable system.” Up until 2 years ago it did have its own system – Simmons Cable TV of Chittenango. This system had its own head-end, channel line-up, and local origination capabilities. This was lost when Simmons was merged into Time-Warner, a large conglomerate such as Cox, with less interest in serving the local community. This loss is a void which WVOA proposes to fill by offering a first local radio outlet to Chittenango which no longer has a means of obtaining local programming.

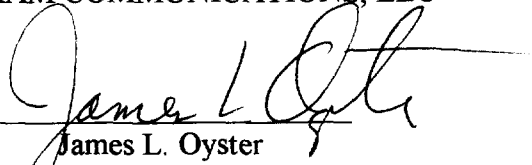
10. Next, Cox states that Chittenango has only one zip code - as if this diminished its importance as a community. It is noted that communities as substantial as Rome and Watertown, NY also have only 1 zip code. Further, Cox states that “Chittenango is an unincorporated village.” In fact, Chittenango has been incorporated since 1848. (See attached Declaration of Craig L. Fox). Based on these misstatements and its own faulty conclusion, Cox states that “the Commission should treat WVOA’s reallocation as a proposed Syracuse allotment.” This simply is not so. There is no justification for treating this as a reallocation to Syracuse. The fact that Cox would make such an argument simply emphasizes its own improper intent to control the Syracuse market at the expense of the public interest. Cox’s motives are clear, and its arguments should be given no weight whatsoever in this proceeding.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant the instant rulemaking as proposed.

Respectfully submitted,

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May 5, 1998

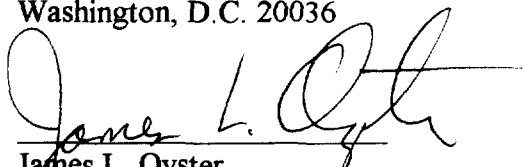
CRAM COMMUNICATIONS, LLC

By 
James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing Reply Comments by first class U.S. mail, postage prepaid, or by hand delivery, on or before this 5th day of May, 1998, to the following:

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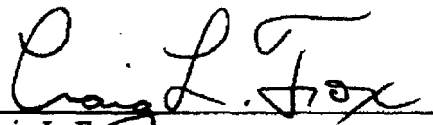

James L. Oyster

DECLARATION

Craig L. Fox hereby makes the following declaration:

- 1. I am President of Cram Communications, LLC, licensee of FM broadcast station WVOA, DeRuyter, NY.**
- 2. I was advised today, April 28, 1998, by Theresa Vincelette, Chittenango Village Clerk (and the same person mentioned in footnote 15 of the COMMENTS OF COX RADIO, INC.), that the Village of Chittenango, NY, was incorporated in 1848 and remains so today.**

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 28, 1998.



Craig L. Fox